

Subpart F—Exemptions**§ 1202.90 What NARA systems of records are exempt from release under the National Security Exemption of the Privacy Act?**

(a) The Investigative Case Files of the Inspector General (NARA-23) and the Personnel Security Case Files (NARA-24) systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because the records in these systems:

(1) Contain information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(2) Are in fact properly classified pursuant to such Executive Order.

(b) The systems described in paragraph (a) are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), and (e)(4)(G) and (H). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From the access and amendment provisions of subsection (d) because access to the records in these systems of records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of either of these series of records would interfere with ongoing investigations and law enforcement or national security activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(3) From subsection (e)(1) because verification of the accuracy of all information to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(4) From subsection (e)(4)(G) and (H) because these systems are exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(1) of the Privacy Act.

§ 1202.92 What NARA systems of records are exempt from release under the Law Enforcement Exemption of the Privacy Act?

(a) The Investigative Files of the Inspector General (NARA-23) system of records is eligible for exemption under 5 U.S.C. 552a(k)(2) because this record system contains investigatory material of actual, potential or alleged criminal, civil or administrative violations, compiled for law enforcement purposes other than within the scope of subsection (j)(2) of 5 USC 552a. If you are denied any right, privilege or benefit that you would otherwise be entitled by Federal law, or for which you would otherwise be eligible, as a result of the record, NARA will make the record available to you, except for any information in the record that would disclose the identity of a confidential source as described in 5 U.S.C. 552a(k)(2).

(b) The system described in paragraph (a) of this section is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1) and (e)(4) (G) and (H), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation about the alleged violations, to the existence of the investigation and to the fact that they are being investigated by the Office of Inspector General (OIG) or another agency. Release of such information could provide significant information concerning the nature of the investigation, resulting in the tampering or destruction of evidence, influencing of witnesses, danger to individuals involved, and other activities that could impede or compromise the investigation.

(2) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or administrative violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his/her activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the

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subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. The amendment of these records could allow the subject to avoid detection or apprehension and interfere with ongoing investigations and law enforcement activities.

(3) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG or another agency for the following reasons:

(i) It is not possible to detect relevance or need for specific information in the early stages of an investigation, case or matter. After the information is evaluated, relevance and necessity may be established.

(ii) During an investigation, the OIG may obtain information about other actual or potential criminal, civil or administrative violations, including those outside the scope of its jurisdiction. The OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator, which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4)(G) and (H) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

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(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

§ 1202.94 What NARA systems of records are exempt from release under the Investigatory Information Material exemption of the Privacy Act?

(a) The Personnel Security Case Files (NARA-24) system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal employment or access to classified information. The only information exempt under this provision is that which would disclose the identity of a confidential source described in 5 U.S.C. 552a(k)(2).

(b) The system of records described in paragraph (a) of this section is exempt from 5 U.S.C. 552a(d)(1). Exemption from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation.

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

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